I think there can be no doubt that the order of the High Court did not purport to (and indeed in the state of the parties before it could not) decide upon the respective legal rights of the lessor and lessee and that it did no more than refuse to make a specific order upon the Receiver to "renew" a lease, which, upon the material available, might or might not in law have already been renewed.

I am clearly of the opinion, therefore, that the Board is free in these proceedings to decide the questions before it entirely unfettered by any order made in Suit No. 179 of 1936.

With regard to costs, I am of the opinion that had the applicant, when the Board raised this question, acceded to the views put forward by the respondent this special case would not have been necessary. In view of the fact, which I have already mentioned, that the applicant was a party to the proceedings in Chambers in the High Court it should have been clear to the applicant that the respondent's view was the correct one, and the Board should have been informed accordingly. Moreover, the applicant argued the case before me on the same basis as before the Board and has been unsuccessful. I am of the opinion, therefore, that the costs should follow the event and that the costs of these proceedings in the High Court should be taxed and paid by the applicant to the respondent, and there will be an Order to this effect.

Order accordingly.

Solicitors: *H. E. P. Powell & Co.; Pillai, Lim, Lee & Hwang.*

NG SIEW ENG & ANOR. v. LOH TUAN WOON

[O. C. J. (Whitton J.) March 24, 1955]

[Singapore — Suit No. 1005 of 1954]

Negligence — Contributory negligence — Breach of statutory duty — Road Traffic Ordinance, 1941, s. 75 — Toll-bar across mouth of side-road.

The facts in this case were that on May 24, 1953, shortly after dark one Tay Kim Peng was riding a motor cycle with one Goh Lye Yong as pillion rider along a side road through Bukit Sembawang Estate towards Jurong Road when he collided with an iron bar placed across the mouth of the side road by the defendant for the purpose of collecting toll, and incurred injuries from which he died soon afterwards. The learned Judge at the trial also found: (1) there were red reflectors fixed on the bar, one showing in either direction; and (2) the iron bar was normally kept down until 9 or 10 p.m. The plaintiffs who were the personal representatives of the deceased claimed that the defendant in placing the bar across the road at the time of the accident was negligent and also acted in breach of the statutory duty imposed on him by s. 75 of the Road Traffic Ordinance, 1941.

Held: (1) in placing a reflector on the bar the defendant had performed in the circumstances of this case all that the law required of him as far as licensees were concerned; (2) the deceased in this case failed to exercise due care for his own safety, and this was the substantial cause of the accident; (3) damages can be recovered for the breach of the statutory duty imposed by s. 75 of the Road Traffic Ordinance, 1941 but in this case the negligence of the deceased defeated the plaintiffs' claim as the deceased's negligence was the substantial cause of the accident.

Cases referred to:—

(1) *Wingrove v. Prestige & Co. Ltd.* (1953) 1 W.L.R. 449, 454.
(2) *Cutler v. Wandsworth Stadium Ltd.* (1948) 1 K.B. 291, 298.
(3) *Monk v. Warbey* (1935) 1 K.B. 75.
(4) *London Passenger Transport Board v. Upson & Anor.* (1949) A.C. 155.
(5) *Caswell v. Powell Duffryn Associated Collieries Ltd.* (1940) A.C. 152.

CLAIM for Damages.

Dennis Murphy for the plaintiffs.

T. T. Rajah for the defendant.

Cur. Adv. Vult.

Whitton J.: — On the 24th May 1953 shortly after dark the first plaintiff's husband, Tay Kim Peng, was riding a motor-cycle with one Goh Lye Yong as pillion-rider along a side-road through Bukit Sembawang Estate towards Jurong Road when he collided with an iron bar placed across the mouth of the side-road for the purpose of collecting toll, and incurred injuries from which he died soon afterwards. Toll had been collected for some years previously at that place by the defendant in accordance with an agreement between him and the Bukit Sembawang Rubber Company whereby he was authorised to collect the sums of $2 and $1 per trip for respectively lorries and motor-cars using the side-road, and in return undertook to keep the road in good condition. These facts are not in dispute.

There are, however, two questions of fact which have been strongly contested. Firstly the plaintiffs allege that a red reflector was placed for the first time on the iron bar shortly after the accident on the same night, while the defendant asserts that from the time the bar was originally fixed there were reflectors, one showing in each direction, attached to it. Secondly the plaintiffs allege it had been the practice up to the day of the accident to raise the bar about 7 o'clock each evening, and that only since then has it been kept down until 9 or 10 p.m., which is admittedly the present arrangement, while the defendant maintains it has always remained down until 9 or 10 o'clock.

As to a reflector, at least six Chinese witnesses for the plaintiffs testified there had never been a reflector on the bar before the accident, while three called for the defence supported the defendant in affirming there

had been one for long previously. In this situation I feel one must mainly rely on the independent witnesses. Of these neither of the ladies attached to local Health Clinics as midwives was able to assist much. Mrs. Forsyth had seen reflectors on the bar, but could not recall when she had first seen one there. Miss Fong had no recollection of seeing any reflector on the bar either day or night. I consider, however, reliable evidence on the point was given by the Traffic Branch Officer, Sergeant 1559, who arrived at the scene to investigate about 9 p.m. — that is about two hours after the accident. In his notes made at the time he used the Malay words "batu merah", which mean reflector, implying there was one then. Again Probationary Inspector Ang who went to the scene between 8 and 9 p.m. stated in evidence he examined the bar and there was a reflector affixed to it. Now it has, very properly, been pointed out that during the proceedings before the Coroner no mention was made of the presence of a reflector, and in view of this had it not been for the Sergeant's note I should have felt some doubt as to whether after a lapse of nearly two years his memory and the Inspector's were not at fault, but, since I am satisfied the Sergeant's note was a *bona fide* one made on the spot, I am also satisfied that there was a reflector on the bar when he arrived on the scene. The absence of any mention of it to the Coroner is in my opinion consistent with the officer who conducted the enquiry not having put any question which would evoke such mention. We then come to the suggestion that the reflector was placed on the bar just after the accident. Now the defendant lived about two miles away from where the accident occurred, so, even if one attributes to him a rapid appreciation of the possibility of finding himself in trouble as a result of the accident, it would have been remarkably prompt action on his part to arrange for a reflector to be procured and affixed to the gate before the Police arrived. Inspector Ang says he himself arrived at the spot before the injured man was removed by ambulance, a point on which I do not think one need hesitate to accept the reliability of his recollection. It seems reasonable to assume that until the injured man had been taken away there would have been plenty of onlookers in the vicinity. So, apart from any other consideration, the defendant would appear scarcely to have had much opportunity to fix a reflector to the bar without attracting notice. I think the suggestion the reflector was placed there after the accident is without foundation, and I find accordingly.

Again there was much conflict as to the time the bar used to be raised at the period of the accident. Most of the Chinese witnesses, I fear, were clearly biassed; though I was favourably impressed, without going to the extent of believing him wholly disinterested in his sympathies, by the demeanour of Mr. Chua Chye Huat, a retired employee of the Bukit Sembawang Rubber Company who had had forty years' service with that company. Mr. Chua said in the years 1951, 1952 and 1953 during the season for shooting flying foxes, that is July to September, he had on a number of occasions gone shooting in Kampong Lok Yang, which is reached by this side-road, and that always both on going, between 5 and 6 p.m., and on returning, between 8 and 9, he had found the bar down. Of the independent witnesses, Mrs. Forsyth had a definite impression the bar was on the occasions she had to go that way in connection with her midwife duties, always down at day and always up at night, but as 9 p.m. — and she did not profess to give exact times — was the earliest hour she could recall passing it during the hours of darkness her testimony scarcely carried the matter much further. Miss Fong gave evidence to much the same effect, but she could not even recall the earliest hour she had gone there at night. Inspector Ang, to whose evidence I have referred earlier, stated he had been attached to Jurong Police Station for four months in 1953, and that he had seen the iron bar down as late as 10.30 p.m., but the Inspector did not appear to me quite as meticulous in giving his evidence as he might have been, and as he was speaking without notes to refresh his memory of events in 1953 I am not disposed to put great faith in his statements as to times. Further evidence, however, that the bar used to be down until 9 or 10 o'clock was given by L.C. 1327, who was stationed in the area for about a year. He stated that on two occasions before the accident he had gone on rounds at night in Kampong Lok Yang, once about 10 p.m. and once at 8, and on the occasion he went at 8 the bar was down while on the other occasion it was up. He stated he had never been to that kampong in daytime. As toll-gates are not very frequent in Singapore I do not think there is reason to doubt the reliability of this evidence, even though it refers to a state of affairs in 1953. Apart from the consideration, however, that those I regard as the most trustworthy witnesses support the defence on this matter there is a circumstance also which to my mind makes it more probable the bar was not raised until 9 or 10 p.m. The bar was operated and toll money collected by one Ong Koh Ser, who owned, and lived in, a grocery shop about seventy to a hundred paces away. By agreement with the defendent he retained ten per cent of the takings. Ong Koh Ser stated that between 6 p.m. and the time the bar was raised, 9 or 10 p.m., sometimes between ten and twenty vehicles would enter the side-road. I see no reason to doubt the statement that between ten and twenty vehicles

sometimes used the side-road during that period as I do not think Ong Koh Ser, who is an old man, appreciated the implications of the question, which he answered, if my recollection is correct, without hesitation. If it is accepted that there was this evening traffic there was a clear incentive to Ong Koh Ser to operate the toll until the later hour. Again if it is believed, as I do, that there had been a reflector on the bar prior to the accident, the inference is that operation of the bar during hours of darkness had been contemplated. On the probabilities I think it is likely that even before the accident the general practice was to keep the bar down until about 9 o'clock at any rate, and I accept the defence submission that this was the case.

Turning now to the law, the plaintiffs claim that the defendant in placing the bar across the road at the time of the accident was both negligent and in breach of a statutory duty imposed on him by section 75 of the Road Traffic Ordinance, 1941. I shall deal with the issue of negligence first. On the findings I have stated I think the only way in which the defendant might correctly be held to have been negligent would be if the reflector was in the circumstances an inadequate warning. In this connection the testimony of Mr. Pope, a motor expert, is helpful. Mr. Pope carried out certain tests at the scene on February 15th of this year about 7.30 p.m., the time of day the accident had occurred. I think it can safely be assumed from the photographic and other evidence before the Court that the illumination of the bar on February 15th was at least as good as, and probably better than, it had been on May 25th, 1953. Mr. Pope using the motor-cycle which had been involved in the accident found that at distance of 44 yards — on a very rough patch of road — he could, by focussing the headlamp, pick out the reflectors on the bar. In view of this evidence and after examination of the reflectors which were tendered as an exhibit and which Mr. Pope told the Court, are of the same type as those on the bar, I am of the opinion the reflectors were adequate to give due warning of the existence of the bar to any approaching lorry or motor-car with competent headlights. Where a motor-cycle is concerned, involving as it does a more uncertain focussing element, the matter is more difficult, particularly since, as Mr. Pope told the Court, the light from the neighbouring shophouses did not help at all in showing the presence of the bar, but rather the reverse. Mr. Pope found in two tests that riding the motor-cycle in top gear he could not see the bar at anything over 27 feet although looking hard for it. He expressed the view that with a pillion passenger, assuming the surface in February to have been the same as at the time of the accident, the maximum speed one could do without coming to grief would be 20 m.p.h. If one accepts the proposition that a motor-cyclist on a dry surface going at 20 m.p.h. pulls up in a reasonable distance if he pulls up within 40 feet it is thus arguable that a motor-cyclist relying entirely on vision even though exercising reasonable care might collide with the bar through failure to see the reflector in time. It is, therefore, important to determine the precise duty which was owed in law by the defendant to the deceased. I think the deceased clearly was a licensee. The occupier's duty to a licensee is stated thus by Charlesworth (*The Law of Negligence* — 2nd Ed. p. 199): —

> "A licensee must take the premises as he finds them. The only duty imposed on the licensor is to warn the licensee of unusual dangers actually known to the licensor and which are not known to or discoverable by the exercise of reasonable care on the part of the licensee."

Now, even if it is accepted the toll-bar constituted an unusual danger, which is questionable, I have no doubt that its existence was known to the deceased, who had been working a farm in the kampong to which the side-road leads for six months previously, and who during that period used to travel to town to visit his wife after stays on the farm of two to five days. Also even if, which I think from what the Court has been told of his habits is unlikely, the deceased had not come along the side-road about the same time on previous occasions, it seems to me that, as he knew of the bar's existence, reasonable care on his part required that he should ascertain whether it was blocking his passage on that particular occasion. I conclude then that in placing a reflector on the bar which should have been adequate to disclose the bar's presence to anyone on the lookout for it the defendant was, since the existence of the bar ought to have been known to anyone approaching the point from the side-road (there is no evidence there was any other vehicular route into the kampong), performing all the law required of him as far as licensees were concerned.

It is convenient at this stage to consider whether there was negligence on the part of the deceased himself. It seems almost certain that the unfortunate man rode straight into the bar without seeing it. The night, though dark, was dry. The pillion-rider, Goh Lye Yong, who was at considerable pains to explain away previous statements he had made damaging to the plaintiffs' case, said at the trial: "I meant to say that when we were very close to the gate — only then I saw the iron bar for a second, and I at once drew the attention of the driver to it, but almost at the same time as I gave the warning the accident took place", a statement one can safely assume is as favourable as possible to the deceased. There is also evidence the deceased had taken some alcohol that evening, though this evidence does not warrant any definite conclusions as to possible effects of the alcohol taken. Finally

there is the consideration, to which I have referred already, that the deceased must have known there was a toll-bar at that point, whether he knew or not it was still likely to be across the road at that hour. In view of these facts I think it is impossible to avoid the conclusion the deceased failed to exercise due care for his own safety. In this connection it is perhaps appropriate to quote the following passage from the judgment of Hilbery J. in *Wingrove v. Prestige & Co. Ltd.*[1]:—

"I have assumed for this purpose that these poles constituted an unusual danger, but in my opinion it is impossible to say that the plaintiff had not full knowledge of this danger on the day and at the time of the accident. That for the moment he forgot it does not necessarily mean that he had not knowledge, a continuing and full knowledge. Every one of us, in just such circumstances, with full knowledge and familiar with a danger like that, can on occasions absent-mindedly forget it and bang his head severely. I am bound to confess that I do it myself, and I venture to think it is a thing which might very easily be done by any one of us. For that reason I think that the plaintiff, unfortunately for him, cannot successfully claim at common law under the principle enunciated in **Indermaur v. Dames**, L.R. 1 C.P. 274; L.R. 2 C.P. 311."

It remains to consider whether there was a breach of the statutory duty imposed by section 75 of the Road Traffic Ordinance 1941, and, if so, whether the plaintiffs are entitled to recover. Section 75 reads:—

"Any person who for any purpose places or causes to be placed any rope wire chain tackle or similar apparatus across a road or any part thereof in such a manner as to be likely to cause danger to persons using the road shall unless he proves that he had a lawful right or excuse so to do and that he had taken all necessary means to give adequate warning of the danger be guilty of an offence against this Ordinance.

As the definition in section 2 covers roads "to which the public has access" I consider the side-road in question is covered by section 75. The only point on which I think there can be argument is whether the defendant had taken all necessary means to give adequate warning of the danger. Now, if such a bar had been placed for some purpose across a road where it might be encountered by persons unaware of its existence or across a road where a speed of, say, 40 miles an hour would not be out of place, it would be obvious that if there was only a reflector on the bar all necessary means had not been taken. But at a place where, according to Mr. Pope, 20 miles an hour was the safest maximum speed for a motor-cycle, and where, presumably, much the same would apply to a lorry or car, and where all users might either be expected to be aware of the presence of the reflector or else to use a degree of caution befitting persons travelling on a narrow unfamiliar side-road, the question is not so easy. As I have said, the reflector was adequate, in my opinion, for both lorries and motor cars. Are we to say, then, that the defendant should have provided a lamp, for if a reflector is not sufficient some sort of lamp would clearly be needed, to warn motor-cyclists of the presence of the bar? On the one hand motor-cyclists are as much entitled to be protected against danger as other users of the road. On the other it may be contended the defendant was justified if, in deciding on the amount of warning he should provide, he proceeded on the basis that users of the road would be aware of the existence of the bar and that it would be sufficient to indicate its exact location. A further point in the defendant's favour is that riders of motor-cycles had not to pay toll, and there was a side-path, as the photographic exhibits show, which they could use without difficulty at all times. Nevertheless it is clear that when the defendant gave his evidence to the Coroner he agreed that the bar was dangerous at night (Ex. P. 9), and while I would not wish unduly to pin him or anyone else down to their replies to leading questions put at a Coroner's enquiry — for instance his statement "I agree the deceased lost his life due to the dangerous obstruction placed across the road by my authority" is on the view I take of the facts only in a limited sense correct — I think it is fair to conclude that at the time of the enquiry the defendant did not think he had taken all necessary means to give adequate warning of the danger. While the views he held at that time are not necessarily conclusive I feel they are significant, and after careful consideration I have reached the opinion that in failing to provide more effective warning than a reflector could give there was a breach of statutory duty on his part.

On this finding two further questions arise: firstly whether the plaintiffs are in any circumstances entitled to recover for such breach of statutory duty; and secondly, if they are, whether their claim must be defeated by the deceased's own negligence. Mr. Rajah, who had clearly expended admirable industry in the pursuit of authorities relevant to this case, submitted that a breach of the statutory duty imposed by section 75 did not give a person injured thereby a right of action. Now on this matter the guiding principle in determining English cases is, I think, clearly established. It is that the question whether an individual who has suffered damage through the breach of a statutory duty is entitled to maintain an action must in the last resort depend upon the construction of the statute (*Cutler v. Wandsworth Stadium Ltd.*[2]). Lord Greene M.R. went on to say in *Cutler's case*[2] — "As the question of construction is, ought a right to be implied which *ex hypothesi* is not expressed, this question is to be answered by a consideration of the whole statute and such matters as may legitimately be considered in relation to its interpretation". I respectfully propose to proceed on these lines. Two preliminary observations may be relevantly made. Firstly, the Ordinance is a comprehensive piece of legislation embracing in its scope practically all aspects of road

traffic and the user of motor vehicles in public. Secondly, it closely follows the English Road Traffic Acts 1930 and 1934. In the light of the first of these two factors at any rate it is in my view reasonable to infer that it was mainly to benefit the public this Ordinance was passed. That being so anyone seeking to establish in any instance a private remedy has been created by the Ordinance cannot rely I think on its general object, except perhaps in the case of third parties to which specific reference is made in the preamble. It must be conceded, however, on the authority of *Monk v. Warbey*[3] that under one section at least of the Road Traffic Act 1930 — Section 35 — damages are recoverable although no right to recover them is expressed, and it seems reasonable to suppose the position would be the same were an action to be brought based on the corresponding provision of our Ordinance, section 48. In the course of his judgment in *Monk v. Warbey*[3] Green L.J. said (p. 80) referring to third parties who had suffered injury by the negligence of uninjured persons. "How could Parliament make provision for their protection from such risks if it did not enable an injured third party to recover for a breach of Section 35?" It might, with respect, be suggested that the provision was introduced solely for its deterrent value, but, be that as it may, I think *Monk v. Warbey*[3] can be regarded as authority for the following two propositions in relation to the Road Traffic Acts: (1) that the existence of a penalty does not exclude the right to recover damages for a breach of statutory duty; (2) that where there is no other remedy open to the individual the existence of a right to recover damages is probably implied. The matter appears to be carried a step forward in favour of an injured party by *London Passenger Transport Board v. Upson & anor.*[4]. In that case one of the points under consideration was a breach of regulation 3 of the Pedestrian Crossing Places (Traffic) Regulations 1941. The following passage occurs in the judgment of Lord Wright (p. 166) :—

"Some confusion was introduced throughout because regulation 3 was not expressly pleaded, but the majority of the Court of Appeal held that as the substance of the matter was set out, the issue was open, and the majority of the Court of Appeal were prepared to decide the case upon it. I read their decision as being based on the breach of regulation 3, as a separate and independent cause of action, subject etc. . . . . "

This was a House of Lords decision and I do not think there is anything in the judgments indicating disagreement with the line taken by the Court of Appeal. Now the case has to my mind a twofold significance in dealing with our suit. It established in the first place that an injured party could succeed on the basis of breach of statutory duty although there was also available as a cause of action common law negligence, and in fact not only was negligence alone originally pleaded, but the claim based on negligence was unsuccessful. Secondly, it establishes the fact that a plaintiff if unsuccessful in his common law cause of action does not necessarily mean he cannot succeed in a claim based on breach of statutory duty.

Now with regard to section 75 of our Ordinance I must say that were it not for the weighty authority of the *London Passenger Transport Board v. Upson*[4] I should feel doubtful about ascribing to our legislators the intention that a breach of the section should be a ground of claim for damages. But in view of this decision, which was at the end of 1948, it seems to me that nothing in *Cutler v. Wandsworth Stadium Ltd.*[2] in which the decision of the Court of Appeal was confirmed by the House of Lords at the beginning of 1949, without as far as I can trace any reference to *London Passenger Board v. Upson*[4], can be taken as calling into question in any way the right to recover damages for a statutory breach of the Pedestrian Crossing Places Regulations. Now our section 75 is very similar to, and is clearly based on, section 51 of the 1930 English Act. The only substantial difference is that the person who places potentially dangerous articles across the road in Singapore has the burden placed upon him of proving that he had lawful right or excuse to do so as well as that he had taken proper means for giving warning. It is I think legitimate to assume that our legislators intended our Ordinance to be similar in scope to the English Acts, so that where the latter provide civil remedies it may be in my opinion inferred our Ordinance does also. Now as it must be held on the authority of *London Passenger Board v. Upson*[4] the legislature intended that the person who commits a statutory breach of the regulations in regard to pedestrian crossings should be liable to pay damages there seems to me no logical ground for holding it did not have a similar intention in respect of the person who unlawfully places obstructions on the road. I conclude, therefore, that damages can be recovered for a statutory breach of section 75.

This brings me to the final issue, whether the negligence of the deceased must defeat the plaintiff's claim. I should say at this point that in my view the deceased's negligence was the decisive cause of the accident. While the measures taken to draw attention to the presence of the bar left a good deal to be desired, it had been there a number of years without causing mishap and its existence must have been known to all people living in the kampong. On my finding that it was the practice to keep it down until 9 p.m. or later I think that anyone who collided with it about 7.30 in the circumstances the deceased did must be held mainly to blame for the accident. Now on the authority

of *Caswell v. Powell Duffryn Associated Collieries Ltd.*[5] it appears that the position in England, prior at least to the Law Reform (Contributory Negligence) Act 1945, in respect of injuries caused by a breach of statutory duty does not differ from an action in respect of injuries caused by any other wrong where the injury was caused wholly or in part by the omission of the injured party to take the ordinary care that would be expected of him in the circumstances, and I take it that must be regarded as the position at the present moment in the Colony. On the ground, then, that the deceased's own lack of care was the substantial cause of the accident I think that this claim must fail.

It may be desirable in case the matter is carried further for me to reach a finding on the widow's financial loss arising out of the death of the deceased. She said he normally gave her $400 per month for the maintenance of the household including breakfast and dinner for the husband and the education of the children. She described him as a building contractor. Now I think it is clear in view of the evidence given by the Prosecution witnesses that for the six months prior to his death the deceased's main activity was in connection with the farm referred to earlier, and the evidence of building contracts during the first part of 1953 is tenuous. I think the widow's picture may have been true of an earlier period but I doubt if it represented the position at the date of her husband's death. Evidence was adduced that the farm yields about $150 per month income. The information available is not at all as full as one could wish, but assuming the deceased was making about $150 a month from his farming activities and was still making something from sub-contracts I am inclined to think that $200 per month is perhaps as fair a figure as one can reach on the information available as to what the widow has lost financially by her husband's death.

I give judgment for the defendant with costs.

Claim dismissed.

Solicitors: *Hilborne & Murphy; Mallal & Namazie.*

HAJI ISMAIL BIN MAT SA'AT v. PUBLIC PROSECUTOR

[C. A. (Mathew C.J., Wilson and Buhagiar JJ.) February 14, 1955]

[K. L.—F. M. Criminal Appeal No. 75 of 1954]

Prevention of Corruption Ordinance, 1950, ss. 3(a) and 13(3)—Penggawa—Duties and functions of—Interpretation and General Clauses Ordinance, 1948, s. 2(1)(60A)—Conviction on uncorroborated evidence of accomplice—Direction.

The appellant in this case was convicted under s. 3(a) of the Prevention of Corruption Ordinance in that he, being an agent, viz. a Penggawa of a place in the State of Kelantan, corruptly accepted the sum of $50 as an inducement for showing favour to another person in relation to the appellant's principal's affairs.

By virtue of s. 2(1)(60A) of the Interpretation and General Clauses Ordinance, 1948, as amended by Ordinance No. 41 of 1953, a Penggawa, in the State of Kelantan is a Penghulu. A Penghulu is an officer recognised in various Statutes and is given various powers, duties and functions, *inter alia*, under the Courts Ordinance, 1948, a Penghulu has judicial functions.

Held: a Penggawa is an agent within the meaning of the Prevention of Corruption Ordinance, 1950.

In the course of his grounds of decision, the learned trial Judge said: "I did not regard them (P.W.'s 3, 5, 6 and 7) as accomplices whose evidence is unworthy of belief, and even if they were to be considered as such I warned myself of the danger of accepting their evidence." Counsel for the appellant argued that once the trial Judge had come to the conclusion that the said prosecution witnesses were not accomplices it was impossible for him to warn himself adequately against dangers of convicting upon their evidence.

Held: the warning as expressed in the trial Judge's grounds of decision would not be sufficient direction in a case of a trial by jury or with assessors, but in this case the trial Judge had clearly in his mind the legal problems relating to the evidence of accomplices and the provisions of s. 13(3) of the Prevention of Corruption Ordinance, 1950.

COURT OF APPEAL.

R. H. V. Rintoul (*Lim Cheang Poh* with him) for the appellant.

E. Brown (Federal Counsel) for the respondent.

Cur. Adv. Vult.

The judgment of the Court was delivered by:—

Buhagiar J.: —The appellant was charged with an offence punishable under section 3(a) of the Prevention of Corruption Ordinance, 1950, in that he, being an agent, to wit the Penggawa of Daerah Limbat in the district of Kota Bharu in the State of Kelantan, corruptly accepted the sum of $50 from one Riffin bin Said for himself as an inducement for showing favour to the said Riffin bin Said in relation to the appellant's principal's affairs. The trial Judge found the appellant guilty on this charge, convicted him and sentenced him to imprisonment for one year.

The first ground of appeal was that no evidence was led by the prosecution as to the duties or functions of a penggawa and therefore no *prima facie* case was established at the close of the case for the prosecution. A short answer to this contention is that in the State of Kelantan a penggawa is a penghulu (see section 2(1)(60A) of the Interpretation and General Clauses Ordinance, 1948, as amended by Ordinance No. 41 of 1953). A Penghulu is an officer recognised in various statutes and by statute he is given various powers, duties and functions; *inter alia* under the Courts Ordinance, 1948, a penghulu has judicial functions. That being so, it is not necessary to adduce any evidence as to the powers, duties and functions of a penggawa and there can be no question that a penggawa is an agent within the meaning of the Prevention of Corruption Ordinance, 1950.